

JUL 28 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ISSAC PERDAN-PASTRADA,

Defendant - Appellant.

No. 05-30094

D.C. No. CR-04-60011-HO

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Michael R. Hogan, Chief District Judge, Presiding

Submitted July 24, 2006**

Before: ALARCÓN, HAWKINS, and THOMAS, Circuit Judges.

Issac Perdan-Pastrada appeals the sentence imposed following his guilty plea to being a deported alien found in the United States in violation of 8 U.S.C. § 1326. We have jurisdiction pursuant to 28 U.S.C. § 1291 and affirm.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

The district court did not err in applying an enhancement pursuant to 8 U.S.C. § 1326(b)(2) based on Perdan-Pastrada's prior felony drug trafficking conviction. The fact of a prior conviction does not need to be admitted by the defendant or proven to a jury beyond a reasonable doubt for purposes of sentencing. *See United States v. Booker*, 543 U.S. 220, 244 (2005); *United States v. Weiland*, 420 F.3d 1062, 1080 n.16 (9th Cir. 2005) (noting the continuing vitality of *Almendarez-Torres v. United States*, 523 U.S. 224, 247 (1998)).

Perdan-Pastrada's contention that due process prohibited retroactive application of the remedial portion of *United States v. Booker*, 543 U.S. 220 (2005), is foreclosed by *United States v. Dupas*, 419 F.3d 916, 919-21 (9th Cir. 2005). Similarly, Perdan-Pastrada's contention that application of *Booker* to the Sentencing Guidelines violated the ex post facto clause is foreclosed. *See id.* at 924.

AFFIRMED.